Supreme Court, U.S.
FILED

001177 JAN 16 2001

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Floyd A. Beierle ----PETITIONER

VS.

State of New Jersey ----RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI

TO THE NEW JERSEY SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Floyd A. Beierle, Pro Se
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Wrightstown, NJ 08562
(609) 758-1562

Questions Presented for Review:

1. Does allowing separate state statutes or individual court's discretion on definition & refundability of court "costs" violate the due process/equal protection process of the 14th amendment of the US Constitution?

2. Does the non-refunding of monies paid by a citizen for court fees/costs whose municipal court's conviction was reversed constitute a double-tax not shared by citizens of several states and is therefore a violation of Article 4 of the Constitution?

3. Are the definitions of "costs" dependent upon which court/proceeding they were incurred?

4. Where does the lowest local court, usually called "municipal court", fit in the definitional process of "costs" (civil, quasi-civil, quasi-criminal, criminal)?

5. Are filing fees, clerk's fee, transcript fees, copying fees (for briefs) and petition/motion fees considered "costs" and therefore refundable upon reversal of conviction?

List of Parties:

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Robert D. Bernardi, Burlington County Prosecutor
Deborah A. Siegrist, assistant prosecutor of counsel and on the Brief

Floyd A. Beierle, Pro Se

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TABLE OF AUTHORITIES CITED

STATUTES AND RULES

Rule 2:11-5, New Jersey Rules of Court, 2000
§10.2, New Jersey Appellate Handbook, 1996

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the New Jersey Supreme Court to review the merits appears at Appendix D to the petition and is unpublished (this is the denial for recertification).

The opinion of the New Jersey Supreme Court to review the merits appears at Appendix C to the petition and is unpublished (this is the denial for certification with costs).

The opinion of the Superior Court of New Jersey, Appellate Division appears at Appendix A to the petition and is unpublished (motion for costs denied).

The opinion of the Superior Court of New Jersey, Appellate Division appears at Appendix B to the petition and is reported at *State v. Beierle*, 325 N.J. Super. 395 (App. Div. 1999).

JURISDICTION

The date on which the highest state court decided my case was June 7, 2000. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date, October 19, 2000, and a copy of the order denying rehearing appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

The 14th amendment (Sect. 1)to the United States Constitution states that "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.".

Article 4 (Sect. 2, subparagraph 1) of the US Constitution additionally notes that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.".

STATEMENT OF THE CASE

This case started with a citation issued on May 14, 1997 in Chesterfield, NJ for traveling 50 miles per hour (mph) in a alleged 35 mph zone in violation of N.J.S.A. 39:4-98. The trial commenced in Chesterfield Municipal Court on August 20, 1997 with a finding in favor of the State with the imposition of a fine, court costs, and points.

A notice of appeal to the Superior Court of New Jersey, Burlington County was filed on September 5, 1997. This appeal was heard June 5, 1998, reaffirming the lower courts decision.

A notice of appeal to the Superior Court of New Jersey, Appellate Division was filed on July 15, 1998. This case was argued on October 5, 1999 and decided on November 9, 1999. In actuality, this case was decided and affirmed based upon the amicus curiae brief of the Commissioner, New Jersey Department of Transportation and the Attorney General of the State of New Jersey stating that the correct interpretation of the statute in question was precisely the position that the defendant had presented during the Municipal Court session. A motion for costs was denied on

January 18, 2000 but noting that the remission of any fines at the Municipal Court should be made.

A petition for certification to the New Jersey Supreme Court was denied with costs on June 7, 2000. Only the filing fees for the Superior Court and Superior Court, Appellate Division less $5.00 for "clerk commision" were remitted to the petitioner. A petition for reconsideration for certification to the New Jersey Supreme Court was denied on October 19, 2000.

REASONS FOR GRANTING THE PETITION

The issue of whether the imposition of statute or Rule-mandated fees ("costs") at various stages of an appeal process which are then defined as non-refundable after a reversal of conviction is a violation of the 14th amendment of the United States Constitution was raised on the petition for certification to the New Jersey Supreme Court. This court (US Supreme Court) should decide whether the imposition of mandatory non-refundable fees and their definitions violate the due process and equal protection clauses of the 14th amendment.

Additionally, this court should also decide whether the discretionary refund of mandatory fees paid during an appeals process in various states becomes a violation of Article 4 of the United States Constitution upon a reversal of conviction of a defendant.

The promulgation of justice in the United States is predicated upon that each individual/citizen has the right to plead not guilty or guilty to an alleged citation or suit. If that person so chooses to fight the allegation in court, it is with the knowledge that if the defendant is found not guilty, then no monies are

extracted from him/her. However, if the defendant is found guilty by the court, the defendant can appeal to the next higher court for a reassessment of the lower court's ruling. This decision to appeal should be tempered with the knowledge that payment of mandatory fees ("costs") will be incurred in order to be eligible for the reassessment at the next higher court. These fees are the filing fees, clerk's fees, copying fees for the briefs as well as the transcripts and appendices, and transcript fees (minimally). It is also assumed by the average citizen (wrongly) that, if the lower court's ruling is reversed, the mandatory fees will be returned to the defendant who paid the fees.

However, it appears that the present legal scenario is that the defendant must really decide between two choices prior to pleading at the first court's hearing: 1. Choose pleading guilty, paying the fine, and go on about life's way (regardless of whether they are really guilty) or 2. If found guilty by the court, pay mandatory fees with essentially no refund possibilities to appeal to a higher court. For illustrative purposes, this choice may be between paying $80.00 for pleading guilty or possibly paying upwards of $300.00 in fees (plus fines) only for the next higher court or additional $500-$2500 to continue up to each higher court. This type of choice has a very chilling effect upon justice. What average citizen, who is not indigent, will choose to pay $300-$2500 for a "not guilty" verdict when one could pay $80 to plead guilty, regardless of being innocent, and be finished with the ordeal? This is tantamount to forcing a "guilty" plea by the State.

To compound this dilemma, the definition of "costs" is not uniformly defined. To further compound this lack of uniformity, the definition of which "out of

pocket" payments for expenses are considered fees, costs, or taxable costs further makes this issue complex.

Some states mandate that only items defined by statute as taxable costs are refundable (both words "taxable costs" must be in the statute); some states understand that costs and fees are similar and may be refunded (avoiding the word "taxable"), while other states note that all fees are not fees. In fact, most states note that filing fees are costs and attorney fees are not costs. To further make this a complex issue, the type of case (civil, quasi-civil, quasi-criminal, or criminal) will color the definition and interpretation of fees/costs and which costs are refundable to defendant upon reversing of the conviction.

Transcripts are mandatory in New Jersey in order to proceed with an appeal to a higher court (New Jersey Appellate Handbook, §10.2, 1996). Thus, a transcript fee is a cost. According to §12:18 in the New Jersey Appellate Handbook (1996) "The items customarily taxable as costs by the clerk of the appellate court include the cost of the transcript and the reasonable expense of printing or reproducing briefs, appendices, motions, and petitions.". However, Rule 2:11-5 (New Jersey Rules of Court, 2000) notes that the allowance of "costs" can be discretionary. Therefore, there is no equal protection under this rule.

The payment of filing fees is mandatory in order to proceed with the appeal process to rectify an "incorrect" decision to the next higher court. As one can observe in this case, the Superior Court of New Jersey, Appellate Division denied costs though the denial of the petition for certification to the New Jersey Supreme Court specified "costs". These refunded costs were restricted to filing fees only and had to be

requested from the highest state court. This does not set a precedent; thus, the next innocent defendant will likely have to appeal to the high court for the same refund of monies paid. As one can see, there is no remedy that is consistently available to an "innocent" citizen and available at the court at which the reversal of the conviction occurred.

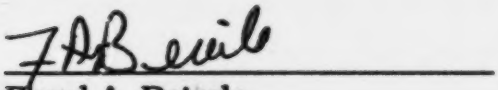
All court systems (Federal and State) in the United States are paid and managed by taxes collected from its citizens. To further demand that "not guilty" citizens make additional money payments to the court system is a discriminatory double tax which is not assessed based upon the income of the individual. This discretionary ability between various States and their courts does not entitle all privileges to all citizens in the several States.

CONCLUSION

Filing and motion fees, clerk's fees, transcript fees, and copying fees, which are paid during the process of appealing an errant decision of a local court (i.e., municipal court), need to be uniformly defined as a "cost" that must be refunded to defendants upon reversal of their conviction. It is not "due process" nor "equal protection" to allow states and jurisdictions to vary in their definitions, thus allowing some innocent citizens fully refundable costs while other innocent citizens having to support a tax-funded system with their double-tax payments. The inability of defendants in a municipal court setting to recoup their payment of mandatory fees ("costs") upon reversal of their convictions has a very chilling effect upon justice.

It is for the above reasons that the petition for a writ of certiorari should be granted.

Respectfully submitted,



Floyd A. Beierle

Date: 16 JAN 01

APPENDIX A

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-006757-97T2
MOTION NO. M-002188-99
BEFORE PART: A
JUDGE(S): D'ANNUNZIO
FALL
BILDER

STATE OF NEW JERSEY
VS
FLOYD A. BEIERLE

MOTION FILED: 11/19/1999 BY: FLOYD A. BEIERLE
ANSWER(S) FILED: 1/6/2000 BY: STATE OF NEW JERSEY
CORRECTIONS FILED: 12/29/1999 BY: FLOYD A. BEIERLE

SUBMITTED TO COURT: JANUARY 12, 2000

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 18TH DAY OP JANUARY, 2000, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

	GRANTED	DENIED	OTHER
- FOR COSTS	( )	(X)	(X)

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6757-97T2

STATE OF NEW JERSEY
Plaintiff-Respondent

v.

FLOYD A. BEIERLE
Defendant-Appellant

Argued: October 5, 1999 - Decided Nov 9, 1999

Before Judges D'Annunzio, Fall and Bilder.

On appeal from the Superior Court of New Jersey Law Division, Criminal Part, Burlington County.

Floyd A. Beierle, appellant, argued the cause pro se.

Deborah A. Siegrist, Assistant County Prosecutor, argued the cause for respondent (Robert D. Bernardi, Burlington County Prosecutor, attorney).

Arlene R. Weiss, Senior Deputy Attorney General, argued the cause for amicus curiae Commissioner, New Jersey Department of Transportation, and Attorney General of the

SUPPLEMENTAL:

The motion is denied, but without prejudice to an application to the Municipal Court for the remission of any fines.

FOR THE COURT:
/s/William M. D'Annunzio J.A.D.

RECEIVED: APPELLATE DIVISION 1/19/2000
FILED: APPELLATE DIVISION 1/19/2000

Assistant Attorney General, of counsel; Ms. Weiss, on the brief).

The opinion of the court was delivered by FALL, J.A.D.

Defendant, Floyd A. Beierle, appeals from his conviction for speeding in a designated school zone. This appeal raises issues of first impression concerning interpretation and enforcement of signs posting a reduced speed limit in a school zone "when children are present."

Defendant was operating his motor vehicle in Chesterfield Township on Route 528, a county highway, in an easterly direction at or near the Chesterfield Elementary School on Wednesday, May 14, 1997, between the hours of 7:00 p.m. and 8:00 p.m. The posted speed limit for Route 528 is 50 miles per hour; however, a speed limit sign posted adjacent to the school stated: "School Zone - Speed Limit 35 - When Children Are Present." The term "school zone" is defined as,

> that portion of a highway which is either contiguous to territory occupied by a school building or is where school crossings are established in the vicinity of a school, upon which are maintained appropriate "school signs" in accordance with specifications adopted by the director[1] and in accordance with law.
> [N.J.S.A. 39:1-1.]

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[1] N.J.S.A. 27:1A-44 transfers all powers and duties exercised and performed by the Director of the Division of Motor Vehicles in the State Department of Law and Public Safety pursuant to the provisions of chapter 4 of Title 39 to the Commissioner of Transportation of the Department of Transportation.

While passing the school, defendant was admittedly traveling at the rate of 50 miles per hour in a "school zone". While it was after school hours, there were approximately fifteen to twenty children playing on baseball fields located on the school grounds and clearly visible from Route 528. Defendant was found guilty of traveling in excess of the posted 35 miles per hour limit on the basis that "children were present" within the school zone.[2]

The statutory authority for the regulation of speed in a school zone is contained in the following pertinent portion of N.J.S.A. 39:4-98:

> [I]t shall be prima facie lawful for the driver of a vehicle to drive it at a speed not exceeding the following:
>
> a. Twenty-five miles per hour, when passing through a school zone during recess, when the presence of children is clearly visible from the roadway, or while children are going to or leaving school, during opening or closing hours.
>
> [N.J.S.A. 39:4-98 (a).]

This statute also permits the Commissioner of Transportation, as to state highways, and municipal or county authorities, with reference to highways under their jurisdiction, to "designate a reasonable and safe speed limit" whenever "it shall be determined . . .that any speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions . . ." N.J.S.A. 39:4-98(c). In accordance with this provision, the school zone speed limit on this county

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[2]At argument, defendant advised us that the Division of Motor Vehicles has assessed four points against his motor vehicle operator's license on both the municipal court conviction and on the Law Division conviction, essentially treating them as convictions on separate offenses. If so, that is clearly incorrect.

highway had been established at 35 miles per hour by resolution of the Burlington County Board of Chosen Freeholders.

N.J.S.A. 39:4-98 also prescribes the requirements for signs posting the applicable speed limit, as follows:

> Appropriate signs giving notice of the speed limits authorized under the provisions of subsection a. and paragraph (2) of subsection b. of this section shall be erected by the commissioner or the municipal or county authorities, as appropriate.
> [N.J.S.A. 39:4-98 (c).]

The following discretion in establishing the type and location of official traffic control devices is granted to the commissioner:

> The [Commissioner] may determine the character, type, location, placing and operation of all traffic control signal devices on the highways of this State. The [Commissioner] may adopt a manual and specifications for a uniform system of traffic control signals consistent with the provisions of this act for use upon public highways within this State. Such uniform system shall correlate with and so far as possible conform to the system then current as specified in the "Manual On Uniform Traffic Control Devices for Streets and Highways."
> [N.J.S.A. 39:4-120.]

N.J.S.A. 39:4-183.27 specifically requires the Commissioner to be "guided by the Manual on Uniform Traffic Control Devices for streets and highways which has been adopted by the Federal Highway Administrator as a national standard for application on all classes of highways."

N.J.S.A. 5:21-4.13 mandates that the design of signs shall follow the Manual on Uniform Traffic

Control Devices for Streets and Highways (Manual) published by the United States Department of Transportation. Section 7B of the Manual provides:

> The fixed message sign assembly shall consist of a top panel (S4-3), 24" x 8" (the legend SCHOOL in black on a yellow background), a Speed Limit sign (R2-1), 24" x 30", and a bottom panel (S4-1) indicating the specific periods of the day and/or days of the week, when the special school speed limit applies. The bottom panel shall be 24" x 10" (or larger if needed) and shall have a black legend on a white background. Alternate legends such as WHEN CHILDREN ARE PRESENT (S4-2) may be used if permitted by law. The numerical speed limit displayed on the sign shall be the limit established by law.
>
> [Manual on Uniform Traffic Control Devices for Streets and Highways, § 7B-12.]

Here, the school zone speed limit sign was properly authorized and conforms to the design requirements specified in the Manual.

Defendant was convicted in municipal court, the judge interpreting N.J.S.A. 39:4-98(a) and the sign as requiring motorists not to exceed a speed of 35 miles per hour in the school zone at all times of the day whenever children are present. Defendant was fined $50 and costs of $30. Following a trial de novo on the record below in the Law Division, defendant was again convicted and the same sentence was imposed, the judge agreeing that 35 miles per hour limit was applicable "any time of the day when children are clearly visible from the roadway."

On appeal, defendant presents the following arguments for our consideration:

POINT I

THE PLAIN LANGUAGE OF N.J.S.A. 39:4-98

SPECIFICALLY LIMITS APPLICATION OF THE 25 MILE-PER-HOUR SPEED LIMIT TO SCHOOL RECESSES, OPENING AND CLOSING HOURS.

POINT II

THE PLAIN LANGUAGE OF N.J.S.A. 39:4-98 IS SUPPORTED BY LEGISLATIVE HISTORY AND INTENT.

POINT III

EVEN IF THE TRIAL COURT'S ERRONEOUS INTERPRETATION OF N.J.S.A. 39:4-98 WAS CORRECT, THE EVIDENCE DEMONSTRATES THAT NO CHILDREN WERE MINIMALLY WITHIN 200 FEET OF THE ROADWAY AT THE TIME AND PLACE OF THE ALLEGED TRAFFIC VIOLATION

Because of the possible statewide ramifications of our decision we, sua sponte, required participation by the Commissioner of Transportation and Attorney General. We now consider the arguments raised by defendant in the order presented.

In his first two arguments defendant contends that the school zone speed limit should be interpreted as only applying during school hours. In its amicus curiae brief, the Commissioner and Attorney General support defendant's position and urge that defendant's conviction be reversed. The Burlington County Prosecutor has advised us, in light of the position of the Commissioner and the Attorney General, it withdraws its opposition to defendant's appeal and joins in moving for reversal.

We are in accord with the interpretation advanced by the Commissioner and Attorney General that N.J.S.A. 39:4-98(a) is applicable (1) during school hours, but only during recess, when children are

clearly visible from the roadway, or (2) when children are going to or leaving school during opening or closing hours of school. Accordingly, the school zone speed limit of 35 miles per hour was not in force at the time defendant was driving his vehicle.

The language contained in N.J.S.A. 39:4-98(a) is somewhat ambiguous because it is not entirely clear from the wording of the statute whether the phrase "when the presence of children is clearly visible from the roadway" applies only "when passing through a school zone during recess," or applies at any time "when passing through a school zone."

When the plain language of a statute is ambiguous, our function is to ascertain the Legislature's intent. Wingate v. Estate of Ryan, 149 N.J. 227, 236 (1997); State v. Szemple, 135 N.J. 406, 422 (1994). We are satisfied that the legislative history supports the interpretation advanced by the Commissioner and Attorney General. As originally enacted, N.J.S.A. 39:4-98(a) was applicable "when passing through a school zone during recess, or while children are going to or leaving school, during opening or closing hours." L. 1951, c. 3, § 55. In 1983, N.J.S.A. 39:4-98(a) was amended by adding the language "when the presence of children is clearly visible from the roadway" after the words "during recess." L. 1983, c. 227, § 2. The Statement to the Assembly Committee Substitute for the S-378 and A-1007, the version of the bill that was later enacted, states, in relevant part:

> R.S. 39:4-98 presently includes a provision that a driver of a vehicle should not drive at a speed exceeding 25 miles per hour when passing through a school zone during recess. The committee substitute amends that provision to that the 25 mile an hour speed limit only applies for a driver passing through a school

> zone during recess when the presence of children is clearly visible from the roadway. [Statement of Assembly Transportation and Communications Committee to Assembly Committee Substitute for S-378 (OCR) and A-1007, February 14, 1983.]

We are satisfied that the legislative history clearly reflects it was not the intent of the Legislature by its 1983 amendment to apply the special speed at all times in a school zone "when children are present." Rather, it was the intent of the Legislature to limit the applicability of the special speed limit in a school zone to those occasions, during recess, "when the presence of children is clearly visible from the roadway," or at times when children are going to or leaving school during opening or closing hours of school.

Having determined that application of the 35 mile per hour school zone speed limitation to defendant's operation of his vehicle on May 14, 1997 was erroneous, we need not address the remaining contention by defendant concerning the proximity of the children to the roadway.

We reverse defendant's convictions and remand the matter to the Law Division for entry of an amended judgment finding defendant not guilty of the motor vehicle speeding charge. We do not retain jurisdiction. Because we reverse, no points or surcharges should be assessed against defendant arising from this May 14, 1997 incident.

APPENDIX C

SUPREME COURT OF NEW JERSEY
C-1064 September Term 1999
49,225

STATE OF NEW JERSEY,
Plaintiff-Respondent,

V.

FLOYD A. BEIERLE,
Defendant-Petitioner,

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-6757-97 having been submitted to this Court, and the Court having considered the same,

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 6th day of June, 2000.

/s/Stephen W. Townsend
CLERK OF THE SUPREME COURT

Filed June 7, 2000

APPENDIX D

SUPREME COURT OF NEW JERSEY
September Term 2000
M-283/M284

STATE OF NEW JERSEY
Plaintiff
V. ORDER
Floyd A. Beierle
Defendant-Movant

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to file a motion for reconsideration as within time (M-283) is granted; and it is further

ORDERED that the motion for reconsideration of the petition for certification (M-284) is denied.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 17th day of October, 2000.

/s/Stephen W. Townsend
Clerk of the Supreme Court

Filed October 19, 2000